

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
CHICAGO DIVISION

BIU, Giang Thi A46-586-642,)
Plaintiff,)
)
v.) Civil Action No. _____
MICHAEL MUKASEY, Attorney)
General of the United States;)
PATRICK FITZGERALD, U.S. Attorney)
The U.S. Department of Justice;) FILED: MAY 13, 2008
MICHAEL CHERTOFF, Secretary,) 08 cv 2778 JH
Department of Homeland Security;) JUDGE HIBBLER
ROBERT L. BLACKWOOD, Chicago District) MAGISTRATE JUDGE SCHENKIER
Office Director, U.S. Citizenship and
Immigration Services;)
Dr. EMILIO T. GONZALEZ, Director,)
U.S. Citizenship and Immigration Services)
Defendants.)

COMPLAINT FOR WRIT OF MANDAMUS

To the Honorable Judges of Said Court:

Plaintiff, Giang Thi Bui, through undersigned counsel, alleges as follows:

INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. §1331, and 28 U.S.C. §1361, to redress the deprivation of rights, privileges and immunities secured to Plaintiffs to compel Defendants to perform a duty Defendants owe to Plaintiffs. Jurisdiction is also conferred by 5 U.S.C. §701.
2. This action is brought to compel Defendants and those acting under them to take action on the U.S. Citizenship Application, form N-400, in order for Plaintiff to become a citizen of the United States.
3. Plaintiff is eligible to have her Application adjudicated.
4. Defendants, the Department of Homeland Security and U.S. Citizenship and Immigration Services, are charged by law with the statutory obligation to adjudicate these U.S. Citizenship Applications, Form N-400.

5. Venue is proper under 28 USC §1391(e)(2) because a substantial part of the events or omissions occurred in this district.

FACTS

6. Plaintiff, a native of Vietnam and was granted lawful permanent resident status on August 14, 1999. *See Exhibit 1 (Copy of Permanent Resident Card).*
7. On January 26, 2006 Plaintiff applied for U.S. Citizenship by submitting Form N-400. *See Exhibit 2 (Receipt for N-400).*
8. On June 5, 2006 Plaintiff appeared and was interviewed by Officer Guerrero of the U.S. Citizenship and Immigration Services, in Chicago, Illinois, pursuant to the naturalization process. *See Exhibit 3 (Naturalization Interview Results).*
9. At the end of the interview, Officer Guerrero informed Ms Bui that she had passed the tests of English and U.S. History and Government, and that a written decision regarding her application would be forthcoming. *Id.*
10. It has now been over two years since Plaintiff was interviewed by Officer Guerrero, and her Citizenship Application, Form N-400, has now been pending since January 26, 2006. Plaintiff has made several requests through her Senator and Congressman, to determine the status of her application and the delay associated with her approval, but has been told that her application is still pending a background check. (See Exhibits 4-5)

CLAIMS

1. Defendants have willfully and unreasonably delayed in, and have refused to, adjudicate Plaintiff's Citizenship Application, Form N-400, thereby depriving the Plaintiff of the benefit of becoming a Citizen of the United States, and the peace of mind to which she is entitled;
2. Defendants owe Plaintiff a duty to adjudicate her Application, and have unreasonably failed to perform that duty;
3. Plaintiff has exhausted any administrative remedies that may exist.

WHEREFORE, Plaintiffs prays that the Court:

1. Compel Defendants and those acting under them to perform their duty to adjudicate Plaintiff's Application;
2. Grant such other and further relief as this Court deems proper under the circumstances; and
3. Grant Attorney's fees and costs of Court to Plaintiffs under the Equal Access to Justice Act.

Respectfully submitted this 13th day of May, 2008.



Patrick A. Metcalf
Attorney for Petitioner



08 cv 2778

JUDGE HIBBLER

MAGISTRATE JUDGE SCHENKIER

THE UNITED STATES OF AMERICA

Receipt with Exception			NOTICE DATE February 07, 2006
CASE TYPE N400 Application For Naturalization			INS A# A 046 586 642
APPLICATION NUMBER LIN*000862998	RECEIVED DATE January 26, 2006	PRIORITY DATE January 26, 2006	PAGE 1 of 1
APPLICANT NAME AND MAILING ADDRESS GIANG THI BUI 1ST FL 4514 W IRVING PARK RD CHICAGO IL 60641		PAYMENT INFORMATION: 08 cv 2778 JUDGE HIBBLER MAGISTRATE JUDGE SCHENKIER Single Application Fee: \$400.00 Total Amount Received: \$400.00 Total Balance Due: \$0.00	

The above application has been received by our office and is in process, but has been noted with one or more of the following exception(s):

Missing Evidence(s) - your application was missing evidence(s) that you will need to provide at the time of your naturalization interview. You will be notified under separate notice of the necessary evidence(s) that you will be required to bring to your interview. Do not submit any evidence(s) by mail.

Our records indicate your personal information is as follows:

Date of Birth: February 16, 1980

Address Where You Live: 4514 W IRVING PARK RD 1ST FL
CHICAGO IL 60641

Please verify your personal information listed above and immediately notify our office at the address or phone number listed below if there are any changes.

You will be notified of the date and place of your interview when you have been scheduled by the local INS office. You should expect to be notified within 540 days of this notice.

IMPORTANT NOTICE:

All naturalization applicants who were between the ages of 14-75 at the time of filing must have their fingerprints taken at an INS Application Support Center (ASC) so they can be submitted to the Federal Bureau of Investigation for a criminal history check. If we received your application without a fingerprint card (FD-258), or your fingerprint card was received on or after December 3, 1997, you will need to go to an ASC to be fingerprinted. Do not have your fingerprints taken anywhere else. You will receive a notice that will provide you with information about when and where to go to have your fingerprints taken, and what you will need to bring with you. Please inform the office listed below immediately of any address changes.

If you have any questions or comments regarding this notice or the status of your case, please contact our office at the below address or customer service number. You will be notified separately about any other cases you may have filed.

If you have other questions about possible immigration benefits and services, filing information, or INS forms, please call the INS National Customer Service Center (NCSC) at **1-800-375-5283**. If you are hearing impaired, please call the NCSC TDD at **1-800-767-1833**.

If you have access to the Internet, you can also visit INS at www.ins.usdoj.gov. Here you can find valuable information about forms and filing instructions, and about general immigration services and benefits. At present, this site does not provide case status information.

INS Office Address:

US IMMIGRATION AND NATURALIZATION SERVICE
PO BOX 87400
LINCOLN NE 68501-

INS Customer Service Number:

(800) 375-5283

APPLICANT COPY



JUDGE HIBBLER

MAGISTRATE JUDGE SCHENKIER

Department of Homeland Security
U.S. Citizenship and Immigration Services

N-652, Naturalization Interview Results

A#: 46 36 64

On June 5, 2006, you were interviewed by USCIS officer GUERRERO

You passed the tests of English and U.S. history and government.

You passed the tests of U.S. history and government and the English language requirement was waived.

USCIS has accepted your request for a Disability Exception. You are exempted from the requirement to demonstrate English language ability and/or a knowledge of U.S. history and government.

You will be given another opportunity to be tested on your ability to _____ speak/ _____ read/ _____ write English.

You will be given another opportunity to be tested on your knowledge of U.S. history and government.

Please follow the instructions on Form N-14.

USCIS will send you a written decision about your application.

You did not pass the second and final test of your _____ English ability/ _____ knowledge of U.S. history and government. You will not be rescheduled for another interview for this Form N-400. USCIS will send you a written decision about your application.

A) Congratulations! Your application has been recommended for approval. At this time, it appears that you have established your eligibility for naturalization. If final approval is granted, you will be notified when and where to report for the Oath Ceremony.

B) A decision cannot yet be made about your application.

It is very important that you:

Notify USCIS if you change your address.

Come to any scheduled interview.

Submit all requested documents.

Send any questions about this application in writing to the officer named above. Include your full name, Alien Registration Number (A#), and a copy of this paper.

Go to any Oath Ceremony that you are scheduled to attend.

Notify USCIS as soon as possible in writing if you cannot come to any scheduled interview or Oath Ceremony. Include a copy of this paper and a copy of the scheduling notice.

NOTE: Please be advised that under section 336 of the Immigration and Nationality Act, you have the right to request a hearing before an immigration officer if your application is denied, or before the U.S. district court if USCIS has not made a determination on your application within 120 days of the date of your examination.

Love, Kai (Durbin)

From: Clay, Veronica [REDACTED] on behalf of CHI-Congressional4 [REDACTED]
Sent: Thursday, August 02, 2007 11:25 AM
To: Love, Kai (Durbin)
Subject: RE: A 46 586 642 Giang Bui
Attachments: image001.png

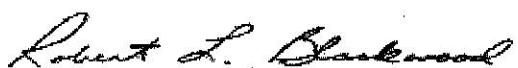
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MAGISTRATE JUDGE SCHENKIER

The Honorable Senator Richard J. Durbin
United States Congress
Attn: Kai Love

This is in response to your inquiry dated August 2, 2007. The United States Citizenship and Immigration Services (USCIS)-Chicago District Office is responding to your inquiry regarding the status of your constituent, Giang Bui. Our information shows that the background investigation conducted by the Federal Bureau of Investigations (FBI) for your constituent has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time period it takes for the results to be electronically submitted to USCIS and updated in our national records.

Please be assured that every case that is pending a background investigation is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the background investigation your constituent must provide a written request with an explanation directed to the District Director for consideration with supporting evidence. The FBI will only expedite the processing if your constituent is in the military, an "age-out", diversity (DV) lottery winner meeting the deadline date or for compelling reasons.

Again, it is difficult to predict with accuracy when the clearance will be updated in our records. Please be assured that every effort is being made to render a final decision in a timely manner.



Robert L. Blackwood
Field Office Director

From: Boldian, Tavia L On Behalf Of CHI-Congressional
Sent: Thursday, August 02, 2007 11:02 AM
To: CHI-Congressional4
Subject: FW: A 46 586 642 Giang Bui

FILE LOCATION: NB-3RD AGENCY RESPONSE (N-400) 3079- PENDING NAME CHECKS 1ST FL

From: Love, Kai (Durbin) [REDACTED]
Sent: Thursday, August 02, 2007 10:49 AM

The Honorable Rahm Emanuel
U.S. Representative
Attn: Jerry Gustafson

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JUDGE HIBBLER
MAGISTRATE JUDGE SCHENKIE

February 21, 2008

A46-586-642 Giang Thi Bui

Dear Congressman Emanuel:

This is in response to your inquiry dated February 20, 2008. The United States Citizenship and Immigration Services (USCIS) Chicago District Office is responding to your inquiry regarding the status of your constituent, Giang Thi Bui. Our information shows that the background investigation conducted by the Federal Bureau of Investigations (FBI) for your constituent has not yet been completed. We may not proceed with the adjudication of the application or petition until the FBI completes their process and our records are updated with the results. It is uncertain the time-period it takes for the results to be electronically submitted to USCIS and updated in our national records.

We understand that your constituent is frustrated by the progress of his/her application. In order to fulfill its mission to provide immigration benefits and services to the public, USCIS must balance its obligations to the individual applicant against its obligations to the public as a whole. While we strive to process applications timely and fairly, we must also ensure that our policies and procedures will safeguard the public. Consequently, we have adopted background security check procedures that address a wide range of possible risk factors, requiring various levels of scrutiny based on the type of application under consideration.

Given the number of applications submitted and the significance of immigration benefits, it is inevitable that some applications will require more attention than others. USCIS relies primarily on three background check mechanisms: the Interagency Border Inspection System (IBIS)-name check, the FBI fingerprint check, and the FBI name check. For the vast majority of applicants, these mechanisms allow USCIS to quickly determine whether there are any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before any decision can be made on the petition or application. USCIS does not share with applicants or their representative's information regarding the specific nature of the match or the nature or status of any investigation.

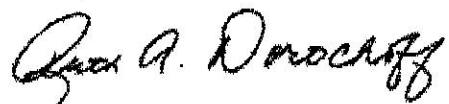
Please be assured that every case that is pending a background investigation is checked weekly for results to keep the adjudication process ongoing and timely. We are allowed to resubmit names pending over 90 days only if the name does not appear in the FBI database after 90 days of submission. If requesting an expedite processing of the background investigation your constituent must provide a written request with an explanation directed to the District Director for consideration with supporting evidence.

The FBI will only expedite the processing if your constituent is in the military, an "age-out", diversity (DV) lottery winner meeting the deadline date or for compelling reasons.

Again, it is difficult to predict with accuracy when the clearance will be updated in our records. Please be assured that every effort is being made to render a final decision in a timely manner.

We appreciate your patience and understanding.

Sincerely,



Ruth A. Dorochoff
District Director